U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

D1

[redacted]

File: LIN 02 295 54440 Office: NEBRASKA SERVICE CENTER Date: AUG 19 2004

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner avers it is not a new U.S. office although it provides evidence that it was incorporated on October 4, 2001 in the State of Wisconsin and the petition was filed September 26, 2002. It claims to operate a liquor store. It seeks to temporarily employ the beneficiary as its managing director. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims that the beneficiary owns 51 percent of its outstanding stock and that the beneficiary is the sole proprietor of Club 16, located in Patiala, India.

The director observed that the petitioner did not claim that it was a "new office," even though it had been organized only 11 months prior to filing the petition. The director noted that he had requested evidence of the beneficiary's managerial and executive capacity both for the foreign entity and for the United States entity and had received the petitioner's response to the request for evidence. The director further observed that the service adjudication was based on the petitioner's claim that it was not a new office. The director determined, based on the evidence in the record, that the petitioner had not established that: (1) the beneficiary's assignment for the foreign entity had been in a managerial or executive capacity; or, (2) the beneficiary's proposed assignment for the United States would be in a managerial or executive capacity.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on May 7, 2003, counsel for the petitioner indicated that a brief and/or evidence would be sent to the AAO within 30 days. To date, careful review of the record reveals counsel's letter dated June 5, 2003 as the only subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

In the June 5, 2003 letter, counsel asserts that the director made an error in reviewing the facts of the case when noting that the petitioner was a new office. Counsel claims that this "error" precluded the petitioner from responding fully to the request for evidence. Counsel requests on appeal that the AAO give the petitioner an opportunity to respond to the request for evidence consistent with the facts of the case.

Counsel should note that the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this matter, the director requested evidence on the beneficiary's managerial or executive capacity for the foreign entity and how the proposed employment would involve executive or managerial authority over the new operation. The petitioner re-submitted the initial description of duties for the beneficiary's foreign

employment and did not address how the beneficiary's proposed employment would involve managerial or executive duties.

Of further note, the AAO concludes that the petitioner was put on notice of a deficiency in the evidence regarding the beneficiary's managerial or executive capacity for the United States entity. The petitioner was given an opportunity to respond to that deficiency when responding to the director's request for evidence. The petitioner's failure to even address the beneficiary's proposed employment regardless of whether the United States entity was a new office or an established office is a ground for denying the petition. *Id.* Moreover, even if the AAO considered that the petitioner was confused regarding the director's request, which it does not, the petitioner is granted an automatic right to appeal the decision of the service center. *See* 8 C.F.R. § 103.3. Therefore, the petitioner is given an opportunity to establish eligibility in the appropriate forum, that being the AAO. Neither counsel nor the petitioner submitted evidence on the issue of managerial or executive capacity on appeal.

The statement by counsel for the petitioner does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal; thus the regulations mandate the summary dismissal of the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.